JURISDICTIONAL STATEMENT

The petitioner's son, John Gale Swatzka, on December 24, 1943, his eighteenth birthday, duly registered with Local Board No. 1, Albany, Linn County, Oregon, and was assigned Order No. 13,169 by said local draft board. On February 28, 1944 the said local draft board classified the registrant as in Class I-A. On March 6, 1944 said registrant signed a notice of appeal to the appeal board by filling out the form on the back of the questionnaire submitted by the registrant to said local board. On March 24, 1944, and while said case was on appeal, the registrant was afforded an opportunity to inspect his file at the Selective Service Oregon State Headquarters in Salem, Oregon. On March 30, 1944 the registrant filed additional information in affidvit or with Local Board No. 1, Albany, Linn County, Oregon, and also at the same time filed the identical additional information in affidavit form with the State Headquarters in Salem, Oregon. The registrant was advised on April 4, 1944 by his local board that the information submitted by him did not warrant the reopening of his classification. On April 22, 1944 the board of appeals by a vote of 4 to 0 affirmed the classification of the local board and classified the registrant in Class I-A. On April 28, 1944 said local board mailed to the registrant an order to report for induction, Army, ordering him to report to Local Board No. 1 at Post-

office Building, Albany, Oregon, at 8:15 o'clock a. m. on May 13, 1944. That pursuant to said order, the registrant reported at said time and place and was then directed to proceed to Fort Lewis, Pierce County, Washington and arrived there on May 13, 1944 at six o'clock P. M. and was examined and at ten o'clock P.M. on the same day the registrant was formally inducted into the United States Army.

The petitioner and the registrant, his son, had completely exhausted their administrative remedies. (*Falbo v. United States,* 320 U.S. 549, and *Billings v. Truesdell,* 321 U.S. 542.) Upon the 15th day of May, 1944, the petitioner for and on his own behalf, and on behalf of his son, the registrant, and with his son's knowledge, filed a petition for writ of habeas corpus in the District Court of the United States, Western District of Washington, Southern Division (R. 2-65). This petition was filed under authority of 28 U.S.C.A., Sec. 451, 452.

Upon the petition being filed, the District Court entered an order requiring the respondents to appear and show cause of the detention of the said minor child, John Gale Swatzka. This order was dated May 15, 1944 (R. 66). After a hearing before said District Court, an order was made and entered on June 1, 1944 discharging the registrant from the United States Army and remanding him back to his local draft board (R. 71-73).

The order discharging the registrant was accompanied by an opinion (R. 75-97), and this opinion was ordered to be the Court's findings of fact and conclusions of law (R. 97). The opinion was not reported.

The respondents appealed from said order to the Ninth Circuit Court of Appeals (R. 100-101). The Circuit Court of Appeals for the Ninth Circuit had jurisdiction to consider this appeal under authority of Judicial Code, Sec. 128(a), 28 U.S.C.A., Sec. 225 (a), and under authority of 28 U.S.C.A., Sec. 463(a).

The Circuit Court of Appeals for the Ninth Circuit rendered and filed its opinion on May 1, 1945 reversing the District Court and reversing the order discharging the registrant. ... F. (2d) ... (R. 315-319). The petitioner filed a petition for rehearing which was denied by the Circuit Court of Appeals for the Ninth Circuit on June 12, 1945 (R. 320).

The right of the Supreme Court to assume jurisdiction to review the decision of the Circuit Court of Appeals by writ of certiorari, is covered by Judicial Code Sec. 240 (a), 28 U.S.C.A. Sec. 347(a).

QUESTIONS PRESENTED

1. Will relief by habeas corpus be granted a registrant where the draft board makes its finding without any substantial vidence? Will relief be granted where the draft board makes its finding without any evidence to sustain its finding and contrary to all the evidence? Will the finding of the draft board be sustained by mere showing to the court that the draft board has considered all the evidence presented to it no matter what the finding of the draft board may be?

2. Where the draft board, in considering a registrant's classification, violates the law and disregards and acts contrary to the regulations issued by the Director of the Selective Service System, and causes a registrant to be improperly inducted into the Army, is such registrant legally entitled to be discharged under a writ of habeas corpus by the courts?

3. Where a draft board, acting under the authority granted to it by the Selective Service Act, makes a finding which is the result of arbitrary and capricious action, or results from bias or prejudice of the draft board towards the registrant, is this a denial of due process and do the Federal Courts have the power to correct such action?

4. Where the findings of fact made by the trial court in a habeas corpus proceedings are supported

by substantial evidence and are not clearly wrong, does the Appellate court have power and authority to do anything more than determine the question of whether or not the findings by the trial court are supported by substantial evidence, in the absence of any errors of law committed by the trial court?

REASONS FOR ALLOWANCE OF WRIT

Your petitioner respectfully represents that a writ of certiorari should be allowed for the following reasons:

AS TO QUESTION NO. 1.

A.

The decision of the Ninth Circuit Court of Appeals upon this question is directly opposed to a decision of the Sixth Circuit Court of Appeals in Rase v. United States, decided June 29, 1943, and reported in 129 F. (2d) 204. Also, it is directly opposed to a decision of the Seventh Circuit Court of Appeals in United States v. Mroz, decided June 3, 1943 and reported in 136 F. (2d) 221. It is directly opposed to a decision of the Eighth Circuit Court of Appeals in Graf v. Mallon, decided October 11, 1943 and reported in 138 F. (2d) 230.

The Circuit Courts of Appeal are in direct conflict as to the right of review by the courts of the actions of draft boards under the Selective Service Act. This conflict falls into three classes:

(1) Unless there is substantial evidence to sustain the finding of the draft board, the action of the draft board is arbitrary and a denial of due process and the erroneous action of the draft board will be corrected by the court on a writ of habeas corpus and the registrant will be discharged.

(2) Unless there is some evidence to sustain the finding of the draft board, the action of the draft board is arbitrary and a denial of due process and the erroneous action of the draft board will be corrected by the court on a writ of habeas corpus and the registrant will be discharged.

(3) That due process has been afforded to the registrant where his draft board has considered all the evidence presented to it, without regard to what the finding of the draft board may be.

The above mentioned conflict is definitely pointed out in the case of *United States, ex rel Trainin v. Cain* (C.C.A. 2, decided August 15, 1944) 144 F. (2d) 944, 947. This opinion states "In the absence of an authoritative ruling by the Supreme Court, we are constrained to believe this the rule most consonant with justice and the requirements of the law." This court then adopted the test of whether the local board had

any evidence before it to sustain its result.

The following Circuit Courts of Appeal have adopted the rule of review which holds that unless there is substantial evidence to support the finding and classification by the draft board, the action of the draft board is arbitrary and a denial of due process, and the registrant will be discharged from the Army under a writ of habeas corpus.

Rase v. United States, (C.C.A. 6, decided June 29, 1943) 129 F. (2d) 204.

Benesch v. Underwood (C.C.A. 6, decided December 17, 1942) 132 F. (2d) 430.

Checinski v. United States (C.C.A. 6, decided June 29, 1942) 129 F. (2d) 461.

United States v. Mroz (C.C.A. 7, decided June 3, 1943) 136 F. (2d) 221.

Bronemann v. United States (C.C.A. 8, decided October 28, 1943) 138 F. (2d) 333.

Graf v. Mallon (C.C.A. 8, decided October 11, 1943) 138 F. (2d) 230.

Seele v. United States (C.C.A. 8, decided February 23, 1943) 133 F. (2d) 1015.

Johnson v. United States (C.C.A. 8, decided March 10, 1942) 126 F. (2d) 242.

In *Ex parte Stanziale,* (C.C.A. 3, decided October 6, 1943) 138 F. (2d) 312, the Third Circuit Court of Appeals held that the test of whether a draft board's action may be attacked seems to shift from whether its findings are supported by substantial evidence, to whether it received and considered what a particular registrant submitted.

In the case at bar the petitioner argued that the correct rule of review was the so-called "substantial evidence rule", while the respondents argued and contended for the so-called "procedural rule". This question was fully argued in the briefs and fully argued before the Circuit Court. The conflict in decisions between the various circuits was called to the Ninth Circuit Court's attention. The opinion by the Ninth Circuit Court of Appeals (R. 315-319) does not state definitely which of these rules of review the Ninth Circuit is following, nor does it establish any other rule of review. However, the effect of the opinion is to adopt the contention of the Government without stating any reasons therefor or making any attempt to analyze said rule and without citing a single authority in support thereof.

B.

The question presented here is an important question of Federal law which has not been but should be settled by this Honorable Court.

The extreme importance of this problem in the administration of the Selective Service System is obvious and the necessity for the settlement of such problems by this Honorable Court is a well recognized ground for review. (*Falbo v. United States*, 320 U.S. 549 and *Billings v. Truesdell*, 321 U.S. 542.)

After the passage of the Selective Service Act by the Congress of the United States, there came before the various Federal courts the question whether or not a defendant in a criminal prosecution for a violation of an order directing a registrant to report for the last step in the Selective process, was entitled to raise as a defense to said criminal prosecution the illegality of his classification. There were conflicting decisions by the Federal District Courts and also there was a conflict between the various Circuits on this question. As a result, this Honorable Court set this question at rest in the cases of *Falbo v. United States,* supra, and *Billings v. Truesdell,* supra.

A similar situation has arisen as to the right of review and the extent of review by courts in a habeas corpus proceedings brought by a registrant after he has exhausted his administrative remedies, where that registrant contends he was illegally inducted into the armed forces of the United States. The various Circuit Courts of Appeal have divided into three classifications on this question of right of review and extent of review. This question has not been settled by this Honorable Court. This Court in *Billings v. Truesdell,* supra, at page 558 held: "Moreover, it should be remembered that he who reports at the induction station is following the procedure outlined in the Falbo case for the exhaustion of his administrative remedies. Unless he follows that procedure he may not challenge the legality of his classification in the courts."

This is a recognition by this Honorable Court that it is within the power of the courts to pass upon the legality of the classification of a registrant by his draft board, but the extent of review by the courts has not been settled.

The Selective Service System is an administrative body. Administrative law is probably the most rapidly developing field of law in our coutnry today. It is exceedingly important for Congress and for our citizens to know how far a statute can be employed in denying to a citizen of the United States his right to have decisions of an administrative body reviewed by the courts, when those administrative decisions are not supported by any substantial evidence whatsoever, and when the result of an administrative decision is to deprive a citizen of his liberty directly contrary to the statutory and organic laws of the United States.

Every inroad made upon a citizen's rights by limiting the meaning of due process of law as guaranteed to us by the Constitution of the United States, weakens the meaning of due process of law, and if carried to the extreme will remove this Constitutional guaranty entirely.

The right of review of other administrative bodies by the courts has been settled by decisions of this Honorable Court. Here, however, we have an administrative body with the right to make decisions

and yet we have no interpretation by this court whatsoever as to how those decisions must be made or what extent the court will go in reviewing those decisions. If this condition is permitted to remain, then that will be authority for taking away the right of review by the courts of decisions made by other administrative bodies. It is extremely important where, as in the Selective Service Act, there is no statutory provision for review by the courts, that it be determined finally by this Honorable Court as to what the right of review is in the absence of statutory authority.

AS TO QUESTION NO. 2.

The decision of the Ninth Circuit Court of Appeals in this case upon this question is in conflict with other applicable decisions of the United States Circuit Courts of Appeals.

The draft boards in considering the classification of John Gale Swatzka, the registrant, violated the law in four definite particulars:

(1) Sec. 623.2 of the Regulations issued by the Director of the Selective Service System provided as follows:

> "623.2. Information considered for classification. The registrant's classification shall be made solely on the basis of the Selective Service

> Questionnaire (Form 40), Affidavit of Dependent over 18 years of Age (Form 40A), Affidavit —Occupation Classification (Form 42), or Affidavit—Occupation Classification (Form 42A), and such other written information as may be contained in his file; provided, however, when a registrant has failed or hereafter fails to return his Selective Service Questionnaire (Form 40) within the time allowed by section 621.2 or when he has failed or hereafter fails to provide the local board with any other information concerning his status which he is requested or required to furnish, the local board shall proceed with his classification without such information. Oral information should not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances should the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file."

The local draft board and the appeal board in affirming a decision of the local board, considered matters in passing upon the classification of the registrant, which they were not permitted to do under the above regulation.

(2) The local draft board wrote a letter to the Linn County War Board and stated that in all agricultural classifications between the ages of 18 and 25 years, it must be proven beyond a doubt that the registrant is actually himself doing work which produces a large marketable surplus of food products, and that *he has been a factor in his production for at least two or three years* (R. 216). This is direct-

ly contrary to the Tydings Amendment to the Selective Service Act and a direct violation of the law. The Tydings Amendment provided as follows:

> "(k) Every registrant found by a selective service local board, subject to appeal in accordance with section 10 (a)(2), to be necessary to and regularly engaged in an agricultural occupation or endeavor essential to the war effort, shall be deferred from training and service in the land and naval forces so long as he remains so engaged and until such time as a satisfactory replacement can be obtained: Provided, That should any such person leave such occupation or endeavor, except for induction into the land or naval forces under this Act, his selective service local board, subject to appeal in accordance with section 10 (a)(2), shall reclassify such registrant in a class immediately available for military service, unless prior to leaving such occupation or endeavor he requests such local board to determine and such local board, subject to appeal in accordance with section 10 (a)(2), determines, that it is in the best interest of the war effort for him to leave such occupation or endeavor for other work."
>
> (Title 50, U.S.C.A. App. Sec. 305(k))

(3) The local draft board in the case of the registrant in question, delegated its power and duty to classify the registrant to the Linn County War Board. Under the Selective Service Act, the duty, power and authority to classify registrants was reposed in the draft boards. The draft boards have never been given the right or authority to delegate their duty of classifying registrants, to any other

agency of the Government, or to anyone else. The record is clear that the local board did delegate its duties to the War Board, as the minutes of the meeting of the local board on February 28, 1944 state that the local board made a finding that the war board had made a fair decision (R. 161).

(4) After the local board had classified the registrant in I-A, the registrant filed with his local board and also with the appeal board, a showing in affidavit form which included his own affidavit, together with the affidavits of all his surrounding neighbors. These affidavits are set forth in the record (R. 11-65). The State Director of the Selective Service System wrote the local board in this case in part as follows:

> "If you find that the request to reopen and consider anew, is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification, you will reopen and consider anew the classification of this registrant * * *." (R. 174-175)

The local board refused to consider this information, which information was directly contrary to the findings made by the local board (R. 177). This act was in direct violation of the order from the State Director. The refusal to reopen the case as directed by the State Director, was a violation of the regulations.

In United States v. Grieme (C.C.A. 3, decided June 9, 1942) 128 F. (2d) 811, the court held that if the

members of a local draft board acted contrary to the law, then that decision of the local board was not final and it could be rectified in the courts.

In *United States ex rel Phillips v. Downer,* (C.C.A. 2, decided May 7, 1943) 135 F. (2d) 521, 525, the court held that on the facts in this case the draftee was erroneously denied the benefits of the exemption he claimed and held this to be an error of law, and then went on to state in the opinion that it has been considered settled under both the draft act of 1917 and the present act that *errors of law are to be rectified by the courts,* and that the writ of habeas corpus should be sustained.

In *Ex parte Stanziale* (C.C.A. 3, decided October 6, 1943) 138 F. (2d) 312, 316, the court assumed that if a local board violates the provisions of one of the regulations laid down for its guidance, the person affected by the violation may have court relief.

In *United States ex rel Beye v. Downer* (C.C.A. 2, decided May 29, 1944) 143 F. (2d) 125, the court held that the local board had clearly disregarded the regulations and, therefore, the registrant was improperly inducted. In this case the trial court had dismissed the writ of habeas corpus and the trial judge was reversed and this court held that the registrant was entitled to be discharged under the writ because the local draft board violated the regulations under the Selective Service Act.

Under the above decisions it is recognized in the other Circuit Courts of Appeal that if a registrant is classified by a local board as a result of that board's failure to act in accordance with the regulations of the Selective Service System, or in violation of the law, then that classification is illegal and if the registrant is inducted into the Army, he is legally entitled to be discharged under a writ of habeas corpus by the courts. The Ninth Circuit Court of Appeals merely states in its opinion in this case that "We do not see that there was any irregularity in the proceeding before either of the draft boards which calls for judicial intervention." The effect of this decision is to disregard the decisions quoted herein from the other circuits. This Honorable Court has never passed upon this specific point, but in view of the decision in the case at bar being in conflict with the decisions of the Second and Third Circuit Courts of Appeal, this is a question that should be passed upon and determined by this Honorable Court.

AS TO QUESTION NO. 3.

The decision of the Ninth Circuit Court of Appeals in in this case upon this question is in conflict with other applicable decisions of the United States Circuit Courts of Appeal.

In the case at bar the local draft board made a finding on January 3, 1944 (R. 141) that the regis-

trant had never worked; that Mr. Swatzka, petitioner herein, a hired man, and Mrs. Swatzka were the producing members of the agricultural units, and that the registrant's hands were fat and smooth and showed no evidence of work. The trial court made a finding at the trial that the registrant's hands could not possibly bear the callouses and hardened surfaces that they bore at the trial, unless they existed when he came into the service (R. 86). Mrs. Swatzka, registrant's mother, was an invalid and had been unable to work, even to do her housework, since 1935 (R. 28). There was no hired man and the Swatzka's had not had a hired man since November 1, 1943 (R. 18).

The record of the local draft board under date of February 7, 1944 (R. 150) stated that the registrant had flunked out of the University of Oregon Summer School. This was just plainly false. The registrant was instead an honor student at the University of Oregon (R. 24). In this same record it was stated that one of the board members helped install a milking machine at the Swatzka farm, and that the registrant was in the house and did not come out until coffee was served. This was directly contrary to the evidence (R. 44-45).

The entire findings of the local board which were affirmed by the appeal board, were based upon proven false statements. The trial court made a finding that there was bias shown by the local draft board,

the appeal board, and the county war board (R. 82). Further, the trial court found that the local board acted very arbitrarily and the actions of the boards cannot be accounted for, except on the basis of bias or prejudice (R. 90). Therefore, in the case at bar, we have actions by the Selective Service boards in making a finding, to-wit: classification of I-A, as a result of arbitrary and capricious action and resulting from bias or prejudice of the boards towards the registrant. The Ninth Circuit Court of Appeals in its decision merely states "We are unable to take the view, to which the able and experienced trial judge was persuaded, that the action of the boards was arbitrary to the extent of denying due process." The appellate court did not pass upon the question whether or not there was any evidence to sustain the findings of the trial judge, but by its opinion held that even though the act of the Selective Service board was arbitrary and capricious or resulting from bias or prejudice, still this was not a denial of due process. The Ninth Circuit Court of Appeals further ignored in its opinion the fact that the Selective Service boards made a finding based upon admitted false and untrue and inaccurate findings in the records of the draft boards. For example, the condition of the registrant's hands, the condition of the registrant's mother, the presence of a hired man, the statement that the registrant had flunked out of school, when in fact he was an honor sutdent. This in itself was a denial of due

process. The finding can be no stronger than upon what it is based.

The other Circuit Courts of Appeal have held as stated in the case of *United States ex rel. Trainin v. Cain,* supra, that it is clear that Congress cannot deny any registrant a Constitutional protection of due process of law, and that it is an error reviewable by the courts when it appears that the proceedings conducted by the draft board has been without or in excess of its jurisdiction or has been so manifestly unfair as to prevent a fair investigation or that there has been a manifest abuse of the discretion with which the board is invested under the Act. Also, the cases cited by petitioner herein under question No. 1 are in point on this question.

The decision by the Ninth Circuit Court of Appeals in the case at bar in refusing to hold that the actions of the draft board as found by the trial judge was a denial of due process, is directly in conflict with the decisions of the other Circuit Courts of Appeal. This is a question that has never been determined by this Honorable Court and should be decided.

AS TO QUESTION NO. 4.

The decision of the Ninth Circuit Court of Appeals in this case upon this question is such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision.

At the close of the hearing in the Federal District Court, the opinion of the District Judge was ordered to be entered as the court's findings of fact and conclusions of law (R. 97). The court found as follows:

(1) That there was bias shown by the local draft board, the appeal board and the County War Board (R. 82).

(2) That if the registrant had not attended the University of Oregon Summer School in 1943 he would have been recommended for deferment (R. 82).

(3) The actions of the father in talking to the members of the various boards caused these boards to let that become a greater factor with them and did not pass upon the registrant's case from an objective angle but from a personal angle (R. 83 and 84).

(4) That the petitioner's farm enterprise needs the services of at least two or probably three persons (R. 84).

(5) That the draft board saw fit to deny any further investigation after reciting that they had received the file containing the affidavits submitted

by registrant (R. 85).

(6) That the registrant spent his whole life on the farm and every spare moment he had outside of his school hours was spent in farm work and there was no basis for the finding by the boards that the boy never worked (R. 85).

(7) That the registrant's hands were not fat and smooth but did show evidence of work at the time the registrant appeared before the local board (R. 86).

(8) That the registrant carried on more than a man's work on this extensive farm operation through the summer of 1943 and following his leaving summer school on August 27, 1943 (R. 87-88).

(9) The Board's finding with regard to the milking machine incident was grossly in error (R. 88).

(10) There was no information before the Board or in the trial of this case to support the finding that the registrant never worked on a farm nor that the registrant was not a factor in production (R. 89).

(11) That the local board acted very arbitrarily in finding that the information submitted by the registrant did not warrant reopening of the classification and the local and appeal boards refused to give any consideration to the new material submitted by the registrant in affidavit form of all the neighbors living in that community (R. 90).

(12) The actions of the boards cannot be accounted for, except on the basis of bias or prejudice (R. 90).

(13) There was no evidence or information to support the finding and recommendation of the War Board (R. 91).

(14) The registrant was necessary to and regularly engaged in agricultural occupation essential to the war effort and no satisfactory replacement for him could be obtained (R. 93-94).

In *Kelly v. Johnston* (C.C.A. 9, decided June 8, 1942) 128 F. (2d) 793, 794, the court held, speaking through Justice Wilbur, as follows:

> "The lower court found against appellant on each of the other issues, and those findings may not be set aside here unless clearly erroneous. Rules of Civil Procedure, 52(a), 81(a)(2), 28 U.S.C.A. following section 723c; Macomber v. Huspeth, 10 Cir., 115 F. (2d) 114, 116."

The above case was a habeas corpus proceedings in which the petitioner therein took an appeal to the Ninth Circuit Court of Appeals. The above statement by Justice Wilbur is a well recognized principle of law and it hardly needs citation, that in a habeas corpus proceedings the findings of fact of the trial court may not be set aside by the appellate court, unless clearly erroneous.

However, the Ninth Circuit Court of Appeals, in the case at bar in its opinion stated that it was unable to agree with the view taken by the trial judge.

The opinion fails to disclose any reason for reversing the trial judge, except that the Ninth Circuit Court of Appeals disagreed with the trial judge. The opinion does not state, nor could it state, that the findings of fact of the trial judge were clearly erroneous and not supported by any evidence. The opinion further does not point out a single error committed by the trial court, but merely reverses the trial court without stating any reason therefor, except that the appellate court disagreed with the trial court. In fairness to the trial courts, this petition for writ of certiorari should be granted to prevent in the future, decisions by the Ninth Circuit Court of Appeals or by other Circuits which do not pass upon the questions involved. In the case at bar, the trial judge, upon reading the opinion of the Ninth Circuit Court of Appeals, is placed in a position of knowing that his decision has been reversed but cannot determine for what reason. The opinion did not offer any guide at all to the trial courts within the Ninth Circuit for their aid in the trial of similar cases in the future. From reading this opinion a District Court would not be in a position to know what it should do in passing upon a petition for writ of habeas corpus, in the event there was a clear finding that the draft board had acted contrary to the Selective Service Regulations, or had committed errors of law, or in the event there was a clear finding that the action of the draft board was a result of arbitrary and capricious actions, or

that the action of the draft board resulted from bias or prejudice of the draft board towards the registrant, yet all of these questions, as well as several others, were directly presented to the Ninth Circuit Court of Appeals in the case at bar and all were material questions that had to be answered in order to determine whether or not the trial judge should be reversed.

Furthermore, the fact that the Ninth Circuit Court of Appeals in the case at bar departed from the well recognized rule as stated in the opinion in the case of *Kelly v. Johnston,* supra, calls for the exercise of this Honorable Court's power of supervision.

PRAYER FOR THE ISSUANCE OF THE WRIT

WHEREFORE, the petitioner prays that this Court issue its writ of certiorari directed to the United States Circuit Court of Appeals for the Ninth Circuit commanding said Court to certify and send to this Court on a day certain, to be designated therein, a full and complete transcript of the record and all proceedings in the cause numbered and entitled in said Court, "No. 10878, Colonel Max W. Sullivan, Commanding Officer, Fort Lewis, Washington, and Lieutenant-Colonel David L. Fredenburg, Commanding Officer, Reception Center, Fort Lewis, Washington, Appellants, vs. John H. Swatzka, Appellee", to

the ends that said cause may be reviewed by this Court as provided by law, that said judgment of said Circuit Court of Appeals be reversed and that petitioner have such other and further relief in the premises as may be just.

Dated at Portland, Oregon, July 20, 1945.

ALLAN A. BYNON,
GERALD J. MEINDL,
Counsel for Petitioner.
1431 American Bank Building,
Portland, Oregon.

CERTIFICATE OF COUNSEL

The foregoing petition for writ of certiorari, together with the hereinafter contained supporting brief, is well founded in point of fact and law, is presented in good faith and is not interposed for delay.

Dated at Portland, Oregon, July 20, 1945.

ALLAN A. BYNON,
GERALD J. MEINDL,
Counsel for Petitioner.